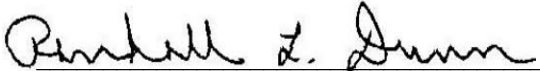


Below is an Opinion of the Court.


RANDALL L. DUNN
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:) Bankruptcy Case
KENNETH ERWIN THOMAS) No. 13-35761-rld13
KRISTIN LIANE THOMAS,)
Debtors.) MEMORANDUM OPINION

On Monday, March 17, 2014, I presided at the final evidentiary hearing ("Hearing") in Bend on OneWest Bank's ("Bank") 1) Motion for Relief from Stay (Docket No. 31) ("RFS Motion") with respect to a property ("Property") that the debtors are renting to a third party(ies) and 2) the Bank's objections to confirmation of the debtors' first amended chapter 13 plan, dated February 14, 2014 (Docket No. 72) ("Amended Plan"). After considering the admitted exhibits, the witness testimony presented, and arguments of counsel, I announced my findings of fact and conclusions of law ("Findings and Conclusions") pursuant to Fed. R. Civ. P. 52(a), applicable in bankruptcy proceedings under Fed. R.

1 Bankr. P. 7052 and 9014, orally.¹ For the reasons stated on the record, I
2 granted the RFS Motion under §§ 362(d)(1) and (d)(2), effective
3 immediately, waiving the 14-day stay of effectiveness under Rule
4 4001(a)(3). With those rulings, most of the Bank's objections to the
5 Amended Plan effectively became moot, as the Amended Plan could not be
6 confirmed as written without the consent of the Bank. However, I went on
7 to find that the debtors filed their chapter 13 case and proposed their
8 original chapter 13 plan and the Amended Plan in good faith. A
9 transcript of my Findings and Conclusions has been prepared (Docket No.
10 102), and I have reviewed it.

11 Subsequent to the Hearing, on March 24, 2014, I entered the
12 order ("RFS Order") submitted by Bank counsel granting the RFS Motion
13 pursuant to §§ 362(d)(1) and (d)(2) and waiving the stay of its effective
14 date under Rule 4001(a)(3) (Docket No. 98).

15 On April 3, 2014, new counsel for the debtors filed a motion to
16 reconsider ("Motion to Reconsider") my rulings on the RFS Motion and the
17 RFS Order (Docket No. 105) ("Motion to Reconsider"), supported by the
18 Declaration of Mr. Thomas. I will deny the Motion to Reconsider for the
19 following reasons.

20 1. Standards for Considering the Motion to Reconsider

21 Motions to reconsider are not recognized as such in the Federal
22 Rules of Bankruptcy Procedure. Rather, if such a motion is filed within
23

24 ¹ Hereafter, unless otherwise indicated, all chapter and section
25 references are to the federal Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
26 all "Rule" references are to the Federal Rules of Bankruptcy Procedure,
Rules 1001-9037. The Federal Rules of Civil Procedure are referred to as
"Civil Rules."

1 fourteen days following the entry of the order in a contested matter, it
2 is treated as a motion to alter or amend the judgment/order under Civil
3 Rule 59, applicable in bankruptcy under Rule 9023. As stated by counsel
4 for the debtors in the Motion to Reconsider, "A Motion for
5 Reconsideration is 'analogous to a motion for a new trial or to alter or
6 amend the judgment pursuant to [Civil Rule] 59 as incorporated by Rule
7 9023.'" United Student Funds, Inc. v. Wylie (In re Wylie), 349 B.R. 207,
8 209 (9th Cir. BAP 2006).

9 The Ninth Circuit has held that "[t]here are three grounds for
10 granting new trials in court-tried actions under [Civil] Rule 59(a)(2)
11 [Rule 9023]: (1) manifest error of law; (2) manifest error of fact; and
12 (3) newly discovered evidence." Brown v. Wright, 588 F.2d 708, 710 (9th
13 Cir. 1978). The debtors do not argue manifest error of law or that I
14 clearly erred in my fact findings. Rather, their argument that I should
15 grant the Motion to Reconsider is based on the fact that subsequent to
16 the Hearing, they have obtained "new evidence," in the form of an earnest
17 money agreement for the sale of the Property to a third party buyer for
18 up to \$400,000 (the fair market value of the Property, as testified to by
19 the Bank's appraiser witness at the Hearing) that they expect can be
20 closed shortly after court approval.

21 2. Discussion

22 I am pleased that the debtors have acted subsequent to the
23 Hearing to find a buyer who may be able to purchase the Property quickly
24 (closing to take place no later than May 12, 2014) for a price that may
25 be acceptable to the Bank and resolve the legal battles that have been
26 ongoing for years between the parties. However, I view that development

1 as a matter for negotiation between the debtors and the Bank, as I
2 suggested at the Hearing. I note that in the exhibits to the Motion to
3 Reconsider, the proposed purchase price for the Property is actually
4 \$350,000, and the "Buyer will pay up to \$400,000 if necessary based on
5 court decision." With RFS granted, it is not my decision, but the Bank's
6 as to what is an acceptable "short sale" purchase price for the Property.

7 In his Declaration, Mr. Thomas states:

8 The reconsideration of the [RFS Order] will allow me
9 to continue to lease the Property from the Buyer with
10 an option to purchase. This will allow me, in the
11 future, to develop the Property, once it comes within
12 the Bend urban growth boundary. The sale of the
Property and the Lease option back is necessary for an
effective reorganization, as this will allow me to
earn money necessary to fund the Plan.

13 I note that the terms of the suggested "lease back" and repurchase option
14 by the debtors for the Property are not specified in the Motion to
15 Reconsider, and I have no way to evaluate what the impact of those
16 arrangements, once they are specified, will be on the feasibility of the
17 debtor's further amended chapter 13 plan. At this point, I have no basis
18 to determine whether such arrangements will have a positive or negative
19 potential impact on performance by the debtors in chapter 13.

20 Accordingly, while the debtors have made progress, they have not cured
21 the speculative aspects of their proposed retention of the Property,
22 which led me to the conclusion at the Hearing that the Property was not
23 necessary to their "effective" reorganization for purposes of
24 § 362(d)(2). The Motion to Reconsider and Mr. Thomas' supporting
25 Declaration do not alter that conclusion.

26 Beyond that, nothing in the Motion to Reconsider or Mr. Thomas'

1 Declaration calls into question my findings that the debtors have made no
2 payments to the Bank with respect to the Property "at least since late in
3 2009," that during that time period, the debtors appropriated the rents
4 from the Property for other purposes, and that there is no dispute
5 between the parties as to the amount owed to the Bank, since no objection
6 has been filed to the Bank's proof of claim. There is no equity as of
7 the filing date for the debtors in the Property, and their hopes that its
8 value will increase substantially in the future for development purposes
9 are too speculative to support my revisiting my determination that cause
10 existed to grant relief from the stay for purposes of § 362(d)(1). I am
11 comfortable with the Findings and Conclusions that I stated orally at the
12 Hearing, and the Motion to Reconsider does not support a reversal of my
13 decision to grant the RFS Motion, effective immediately.

14 Conclusion

15 For the foregoing reasons, I will deny the Motion to
16 Reconsider, and I will enter a contemporaneous order consistent with this
17 Memorandum Opinion.

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19 cc: Ted A. Troutman, Esq.
20 Danielle Hunsacker, Esq.
21 Wayne Godare, Trustee
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